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Sandy M Chiew @ Martinez v James Chiew Siew Hua

HIGH COURT (BRUNEI DARUSSALAM) — PETITION NO 15 OF 2001
JAMES FINDLAY JC
9 AUGUST 2010

Family Law — Divorce — Ancillary proceedings — Settlement of financial arrangements between parties — Whether capital payment suitable for clean break — Parties not frank with court about respective financial affairs — Assessment of capital payment made on unsatisfactory information available

The petitioner applied to court to resolve the question of financial arrangements between herself and the respondent following their divorce. The parties were amenable to the court's suggestion that the respondent make a capital payment to the petitioner to achieve a clean break. Both parties, however, were not frank with the court about their respective financial situation. The petitioner was evasive about her ability to support herself despite her family having a business concern and the fact that her family was a caring one. The respondent, on the other hand, failed to provide the court with an updated status and valuation of his assets particularly with regard to the appreciation in value of his several immovable properties. There was disagreement over whether the petitioner had given the respondent $40,000 'seed money' to enable him to buy into his first law partnership that eventually prospered. The court was also bewildered as to the respondent's failure to explain why he had sold his interest in his law firm to his three other partners for only $187,000 when he had himself valued that interest at $714,000.

Held, ordering the respondent to pay the petitioner $5,000 per month towards a capital payment of $1.2m (less $150,000 already paid) payable within six months of the order, and to bear the costs of the application:

(1) In deciding a fair and reasonable amount for the capital payment, two areas of dispute that needed to be resolved were (i) whether the petitioner provided the 'seed money' to enable the respondent to commence a successful and lucrative legal career and (ii) the net value of the respondent's assets (see para 3).

(2) Since no satisfactory conclusion could be drawn on the matter of the 'seed money' it could not be taken into account in assessing how the respondent's assets was to be divided (see para 6).

(3) The marriage was not of any unusual duration and, apart from the aspect of the seed money, the petitioner did not provide any financial or material

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assistance to the respondent as he built up his wealth. As such, the capital payment was assessed on the basis of about one-third of the respondent's net assets (see paras 7 & 8).

(4) The evidence provided by the respondent as to his assets was unsatisfactory. Making orders requiring further and up to date disclosure of his assets would have involved further delay and expense. An assessment was therefore made on the unsatisfactory information available (see para 20).

[Bahasa Malaysia summary

Pempetisyen memohon kepada mahkamah untuk menyelesaikan persoalan urusan kewangan antaranya dengan responden berikutan penceraian mereka. Pihak-pihak bersetuju dengan cadangan mahkamah bahawa responden membuat bayaran tunai kepada pempetisyen untuk mencapai perpisahan yang baik. Kedua-dua pihak, walau bagaimanapun, tidak jujur kepada mahkamah mengenai situasi kewangan masing-masing. Pempetisyen berkeras mengenai kebolehan menampung dirinya sendiri walaupun keluarganya mempunyai masalah perniagaan dan fakta bahawa keluarganya adalah penyayang. Responden, sebaliknya, gagal untuk memberikan mahkamah status terkini dan taksir aset-asetnya, khasnya berkenaan nilai beberapa harta tak alih. Terdapat pertikaian mengenai sama ada pempetisyen telah memberi $40,000 wang pokok untuk membolehkannya membeli perkongsian guaman yang seterusnya berkembang. Mahkamah buntu mengenai kegagalan responden untuk menerangkan mengapa dia menjual kepentingannya dalam firma guamannya kepada tiga rakan kongsi yang lain pada hanya $187,000 sedangkan dia sendiri menilai kepentingannya pada $714,000.

Diputuskan, memerintahkan responden membayar kepada pempetisyen $5,000 sebulan ke arah bayaran modal $1.2m (kurang $150,000 yang dibayar) terbayar dalam enam bulan daripada perintah dan menanggung kos permohonan:

(1) Dalam memutuskan amaun yang adil dan munasabah bagi bayaran modal, dua perkara pertikaian yang harus diselesaikan merupakan (i) sama ada pempetisyen memperuntukkan 'wang pokok' untuk membolehkan responden memulakan kerjaya guaman yang berjaya dan lumayan; dan (ii) nilai aset-aset responden (lihat perenggan 3).

(2) Memandangkan tiada kesimpulan memuaskan yang boleh dibuat berkenaan hal 'wang pokok', tidak boleh diambilkira bagaimana aset-aset responden hendak dibahagikan (lihat perenggan 6).

(3) Perkahwinan tersebut bukanlah satu tempoh yang luar biasa dan selain daripada aspek 'wang pokok', pempetisyen tidak memperuntukkan sebarang bantuan kewangan atau material kepada responden apabila dia

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mengumpul kekayaannya. Dengan itu, bayaran modal hendaklah ditaksir berdasarkan satu-pertiga daripada aset-aset responden (lihat perenggan 7 & 8).

(4) Bukti yang diberikan oleh responden berkenaan aset-asetnya tidak memuaskan. Mengeluarkan perintah-perintah seterusnya dan pendedahan terkini aset-aset akan melibatkan kelewatan dan perbelanjaan. Penaksiran, dengan itu, dibuat berdasarkan maklumat informasi yang tidak memuaskan (lihat perenggan 20).]

Notes

For cases on ancillary proceedings, see 7(2) *Mallal's Digest* (4th Ed, 2011 Reissue) paras 3603–3606.

Balendran (Ho and Siong) for the petitioner.
Geetha (Abrahams, Davidson) for the respondent.

James Findlay JC:

[1] The parties are divorced and the matter before me for decision is the question of the financial arrangements to finalise the litigation between them.

[2] When I suggested to counsel that it seemed to me that the most satisfactory arrangement would be to order a capital payment by the respondent to the petitioner to achieve a clean break, counsel agreed. I believe that this approach is particularly appropriate because I do not believe that the petitioner has been totally frank with me about her ability to support herself, to some extent at any rate. Her family has a business and her family is clearly a caring one. On her own case, her mother and her sister have been supporting her. I cannot believe that the family business is not able to provide a position for her so that she can earn a living. The respondent has custody of the children – although they are presently with the petitioner – and he is responsible for, and has undertaken to pay, all expenses in relation to them. I am also suspicious about her story about selling her shares in the family business; it does not have a ring of truth about it. In the circumstances, I do not think that an order as to periodic payments would have met the justice of this case.

[3] In the deciding a fair and reasonable amount of such a capital payment, they are two main areas of dispute to be resolved. One concerns whether or not the petitioner provided what might be called the seed money to enable the respondent to commence what transpired to be a successful and lucrative legal career. The second main area of dispute is, as might be expected, the net value of the respondent's assets.

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[4] The petitioner says that she provided the sum of $40,000 to the respondent to enable him to buy into his first law partnership. She did this, she says, because he did not have the money to do so. The respondent denies that she provided this money and says that he paid the money from his own resources.

[5] Apart from the say-so of the parties, the only other evidence produced before me by the petitioner is a receipt dated 17 September 1990. This receipt records that $20,000 was received from the respondent. The receipt records a cheque number, but neither party has been able to produce any bank statements showing from what account the money was drawn. The petitioner also produces some handwritten accounts by the respondent, which, she says, show that the respondent did not have sufficient funds to pay this money. These handwritten accounts date from January 1992 to July of that year. I do not think that any sensible conclusion can be drawn from these handwritten accounts. Nor do I think that the receipt I have mentioned establishes on the probabilities that the petitioner paid the amount rather than the respondent. On the face of the receipt, the payment was made by the respondent, but it is quite possible that the receipt was made in his name because he was handing over a cheque, regardless of who was the drawer.

[6] Because I am unable to draw any satisfactory conclusion to the matter of the seed money, I cannot take it into account in assessing how the respondent's assets should be divided.

[7] Nor does it seem to me that there are any other special factors that should be taken into account in deciding the proportion of the assets that should be used in deciding the capital payment to the petitioner. The marriage was not of any unusual duration and, apart from the aspect of the seed money, it cannot be said that the petitioner provided any financial or material assistance to the respondent as he built up his wealth.

[8] This being the case, and the authorities seem to support this approach, I believe that a capital payment should be assessed on the basis of about one third of the respondent's net assets.

[9] In an affidavit signed on 24 December 2003, the respondent gave a list and valuation of his assets. These were as follows:

PROPERTY

Property	**Cost**
EDR BD 36523	660,000
Lot 20854	290,000

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Unit 1, Block B – 50% owner	475,000
EDR LD 07267	50,000
New Zealand Property NZ$269,000 less loan NZ$128,000	
London Property £146,500 less loan £87,600	
EDR TU09712	50,000
EDR BD 35556 – sold in July 2000	240,000

[10] In his evidence, the respondent mentioned is three other properties:

EDR 20213 — sold for $370,000.

Kg Beribi land — sold for $230,000.

Tanjong Bunut property — sold, but the respondent says he is unable to give any details of this.

[11] It is interesting to note that in respect of EDR BD35556 the respondent does not say for what amount the property was sold and in respect of the properties for which he does give the selling price he does not give the purchase price. This information would, of course, assist me in assessing the appreciation in the value of all the properties.

BANK ACCOUNTS

[12] These, at that time, totalled about $560,000, although the respondent says that a deposit of $329,512 was used to reduce an overdraft with another bank, leaving a credit balance there of about $105,000

VEHICLES

[13] These were valued by the respondent at about $146,000, although the respondent says that one of the vehicles valued then at about $57,000 was in the possession of the petitioner, and that seems to be the case. The value of these vehicles has, I imagine, depreciated since 2003.

UNIT TRUSTS

[14] At that time, the respondent had unit trusts worth about $354,000.

LAW FIRM

[15] The respondent valued his asset in the law firm at about $714,000.

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[16] The respondent retired from his law firm on 1 April 2010 and sold his interest to the other three partners for about $187,000. There is no explanation from the respondent to show me why he sold his interest which had been worth $714,000 for $187,000.

[17] The respondent is giving up a lucrative career. He does not explain why — other than to say he intends to enter academia. The respondent is quite entitled to do this, but he cannot thereby shrug off his responsibilities arising from his marriage.

[18] It is unfortunate that the respondent has not seen fit to give me the updated position and valuation of his assets; in particular in respect of the immovable properties. It is common sense to assume that there has been some appreciation in the values of these properties. The respondent is an experienced legal practitioner and he must know how important it is for the court in these circumstances to have updated values. It is important to note that, according to his counsel's written submission, he has taken pains to show the increase in his expenses in the upkeep of the children. It is a pity he has not undertaken a restatement of his assets and liabilities with the same diligence. I can only assume that is because he knows that there has been an appreciation in the value' of the immovable properties. At any rate, I think I can take it that his financial position has not worsened since 2003. If it had, I am sure he would have said so.

[19] The respondent says that he purchased two pieces of land in the Philippines in about 1997 for a total sum of about $104,000. The land was placed in the name of the petitioner for the sake of convenience because she was a citizen of the Philippines. The petitioner says that she transferred the two pieces of land to her sister for the sum of about $9000 because she owed her sister about US$100,000 advanced to her for her upkeep. I cannot reject that evidence.

[20] Overall, I am not happy with the evidence provided by the respondent as to his assets. Ideally, I could make orders requiring further and up to date disclosure of his assets, but this would involve further delay and expense. This matter has gone on for quite long enough and it is time that this litigation be brought to an end. The documents concerning this case on my desk are over three feet in height! Accordingly, I have decided to make an assessment on the unsatisfactory information I have.

[21] It seems to me, on this basis, a fair and reasonable order is that the respondent pay to the petitioner the sum of $1.2m. From this must be deducted the sum of $150,000 already paid, as agreed by the parties, leaving a balance of $1,050,000.

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[22] I appreciate that it may take some time for the respondent to raise this sum in cash, so I order that the money be paid to the petitioner within six months. In the meantime, the respondent shall pay the petitioner the sum of $5000 per month; these sums to be deducted from the capital payment when made.

[23] As to costs, my impression is that this matter should have been settled and a settlement might have been more easily achieved if the respondent had provided more accurate and more up to date details as to his assets. In any event, it seems on the face of it, the petitioner had to come to court to achieve this result, unless there has been some offer I do not know about. I order that there be a rule nisi that the respondent pay the petitioner's costs of this application.

Respondent ordered to pay petitioner $5,000 per month towards a capital payment of $1.2m (less $150,000 already paid) payable within six months of the order, and to bear costs of application.

Reported by Ashok Kumar